KRISHNADAS ACHUTAN NAIR & ORS.

v.

MANIYAM SAMYKANO

FEDERAL COURT, KUALA LUMPUR
LAMIN MOHD. YUNUS PCA
ANUAR ZAINAL ABIDIN CJ (MALAYA)
GOPAL SRI RAM JCA
[CIVIL APPEAL NO: 02-182-1993]
16 DECEMBER 1996

LAND LAW: *Indefeasibility of title - Circumstances by which title could be defeated - Section 340(4)(b) National Land Code 1965 - Proper meaning - Words "operation of law" therein - Whether vague - Whether superflous - Whether derogative of the Torrens doctrine of indefeasibility.*

INTERPRETATION: *Words in statutes - Interpretation - Principles - Functions of Court - Whether to presume that legislature would not have inserted redundant and unnecessary provisions - Section 340(4)(b) National Land Code - Exceptions to indefeasibility of title - Meaning of.*

WORDS & PHRASES: *"Operation of law" - Section 340(4)(b) National Land Code 1965.*

This was an appeal against the decision of the High Court dismissing the appellants' claim to impugn the respondent's title to a piece of land. The facts showed that the learned Judge, while dwelling upon the issue of indefeasibility under s. 340 of the National Land Code, *inter alia* made an observation, in respect of sub-s. 4(b) thereof, that "it is quite impossible to regard para. (b) as such another exception to indefeasibility. For one thing, the words are very vague, *viz.* "operation of law", which means carrying into effect of the law or working of the law. The scope of the words is practically unlimited...and will make nonsense of the elaborately described exceptions of fraud, forgery etc. Above all it will practically destroy the central theme or the foundation of the Torrens system". In this appeal, notwithstanding the Court of Appeal's affirmation of the learned Judge's order of dismissal, question arose as to whether the observation aforesaid expressed the true meaning of the provision in question and was in accord with well-established authority.

Held:

Per Gopal Sri Ram JCA (delivering the judgment of the Court):

[1] We are unable to accept that Parliament had intended s. 340(4)(b) to have no effect whatsoever or to lack in meaning.

[2] The difference in language between s. 42 of the F.M.S. Land Code Cap. 138, the precursor to s. 340 of the National Land Code, and the said s. 340, does not result in any difference in meaning or consequence. It follows that the cases that have interpreted s. 42 of the Land Code Cap. 138 may safely be relied upon when construing s. 340 of the Code.

[3] Parliament does not legislate in vain by the use of meaningless words and phrases, and *prima facie* every word appearing in an Act must bear some meaning. A judicial interpreter is therefore not entitled to disregard words used in a statute or treat them as superflous or insignificant.

[4] Parliament has enacted s. 340(4)(b) for the purpose of dealing with fact patterns that do not fall squarely within the other exceptions to indefeasibility that appear in the second sub-section to s. 340 of the Code. The term "operation of law" in the sub-section is deliberately used by the legislature to grant relief in cases where contractual or conscientious obligations are undertaken by or imposed on the registered proprietor either at law or in equity.

[5] It is neither possible nor desirable to predict with any degree of certainty the wide range of cases that, while failing to come within the vitiating categories specified by s. 340(2), may yet come within the scope of s. 340(4)(b). By way of illustration, however, cases under the Moneylenders Act 1951, such as *Abirami Ammal & Anor. v. M.S.M.M. Meyappa Chettiar* and *Overseas Union Finance Ltd. v. Lim Joo Chong,* afforded examples of cases coming under this category.

[6] Accepting, for a moment, that the phrase "operation of law" is to be read as referring to the provisions of s. 340(2), it would mean that in such cases as *Abirami Ammal* and *Lim Joo Chong,* where there was no suggestion of fraud, forgery or any of the other matters to which the second subsection refers, the chargor would be unable to rid the register of the offending charge notwithstanding that the entire transaction was in violation of written law. The resultant incongruity would in itself be a sufficient answer to the proposition advanced by the appellant.

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation of Headnotes]*

***UNDANG-UNDANG TANAH:** Sifat ketidak-boleh sangkal hakmilik Keadaan-keadaan dalam mana hakmilik boleh dibatalkan - Seksyen 340(4)(b) Kanun Tanah Negara 1965 - Maksud yang sewajarnya - Perkataan-perkataan "operation of law" di dalamnya - Samada tidak jelas - Samada tidak perlu - Samada mengurangkan doktrin tidak boleh sangkal Torens.*

PENTAFSIRAN: *Perkataan-perkataan dalam statut - Pentafsiran - Prinsip-prinsip - Fungsi Mahkamah - Samada harus menganggapkan bahawa badan perundangan tidak akan memasukkan peruntukan-peruntukan yang tidak perlu - Seksyen 340(4)(b) Kanun Tanah Negara - Kekecualian kepada sifat tak boleh sangkal hakmilik - Maksud.*

PERKATAAN & ISTILAH: *"Operation of Law' - Seksyen 340(4)(b) Kanun Tanah Negara 1965.*

Ini adalah rayuan terhadap keputusan Mahkamah Tinggi yang menolak tuntutan perayu bagi mempersoalkan hakmilik responden terhadap sebidang tanah. Fakta-fakta menunjukkan bahawa Hakim yang bijaksana, sementara memperkatakan tentang isu tak boleh sangkal di bawah s. 340 Kanun Tanah Negara, antara lainnya telah membuat penelitian berhubung dengan seksyen kecil 4(b) di dalamnya, bahawa, "it is quite impossible to regard para. (b) as such another exception to indefeasibility. For one thing, the words are very vague, viz, "operation of law", which means carrying into effect of the law or working of the law. The scope of the words is practically unlimited ... and will make nonsense of the elaborately described exceptions of fraud, forgery etc. Above all it will practically destroy the central theme or the foundation of the Torrens system". Dalam rayuan ini, meskipun terdapat pengikraran Mahkamah Rayuan akan perintah penolakan Hakim yang bijaksana, persoalan telah berbangkit berhubung dengan samada pernelitian yang dibuat menyatakan maksud sebenar peruntukan yang dipersoalkan dan adalah menurut autoriti yang telah lama ditentukan,

Diputuskan:

Oleh Gopal Sri Ram HMR (menyampaikan penghakiman Mahkamah):

[1] Kami tidak dapat menerima bahawa Parlimen meniatkan bahawa s. 304(4)(b) tidak mempunyai apa-apa kesan atau tidak mempunyai maksud.

[2] Perbezaan bahasa antara s. 42 Kanun Tanah Negeri-Negeri Melayu Bersekutu Bab. 138, pelopor kepada s. 340 Kanun Tanah Negara, dan s. 340 tersebut, tidak mempunyai maksud atau akibat yang berlainan. Ianya mengikut bahawa kes-kes yang telah mentafsirkan s. 42 Kanun Tanah Bab. 138 itu boleh digunakan ketika mentafsirkan s. 340 Kanun tersebut.

[3] Parlimen tidak menggubal secara sia-sia dengan menggunakan perkataan-perkataan dan ungkapan-ungkapan yang tidak bermakna, dan *prima facie* setiap perkataan yang terdapat dalam sesuatu Akta mestilah mempunyai makna. Seseorang penterjemah kehakiman adalah dengan itu tidak berhak untuk tidak menghiraukan perkataan-perkataan yang telah digunakan dalam sesuatu statut atau menganggapkannya sebagai tidak perlu atau tidak penting.

[4] Parlimen telah menggubal s. 340(4)(b) bertujuan untuk berurusan dengan fakta-fakta yang tidak terlingkung di dalam kekecualian-kekecualian kepada sifat ketidak boleh sangkal yang terdapat dalam seksyen kecil kedua kepada s. 340 Kanun tersebut. Ungkapan "operation of law" dalam seksyen kecil itu dengan sengaja digunakan oleh badan perundangan bagi membenarkan relief di mana kewajipan-kewajipan kontraktual atau yang hemat adalah diakujanji oleh atau dikenakan ke atas tuanpunya berdaftar sama ada di sisi undang-undang atau dalam ekuiti.

[5] Ianya tidak mungkin boleh diramalkan dengan apa-apa tahap kepastian akan bilangan kes-kes yang, walaupun gagal untuk berada dalam lingkungan kategori yang menjadikan tak sah yang ditetapkan oleh s. 340(2), mungkin boleh berada dalam lingkungan s. 340(4)(b). Walaubagaimanapun, melalui ilastrasi, kes-kes di bawah Akta Pemberi Pinjaman Wang 1951, seperti *Abirami Ammal & Anor lwn. M.S.M.M. Meyappa Chettiar* dan *Overseas Union Finance Ltd v. Lim Joo Chong*, merupakan contoh kes-kes yang berada di bawah kategori ini.

[6] Menerima, buat seketika, bahawa ungkapan "operation of law" hendaklah dibaca sebagai merujuk kepada peruntukan-peruntukan s. 340(2), ianya akan bermaksud bahawa dalam kes-kes yang sedemikian seperti *Abirami Ammal* dan *Lim Joo Chong*, di mana tidak terdapat saranan fraud, kepalsuan atau mana-mana perkara lain yang mana seksyen kecil yang kedua merujuk, penggadai tidak akan dapat menghapuskan gadaian yang menyalahi itu dari daftar meskipun keseluruhan transaksi itu melanggari undang-undang bertulis. Ketidak-sesuaian yang diakibatkan olehnya akan dengan sendirinya menjadi jawapan yang memadai bagi cadangan yang dikemukakan oleh perayu.

[Rayuan ditolak]

Cases referred to:

Yong Joo Lin & Ors. v. Fung Poi Fong [1941] MLJ 63 ***(aff)***
Ong Chat Pang & Anor. v. Valliappa Chettiar [1971] 1 MLJ 224 ***(aff)***
Dr. Benjamin George & Ors. v. Majlis Perbandaran Ampang Jaya [1996] 2 CLJ 843 ***(aff)***
Abirami Ammal & Anor. v. M.S.M.M. Meyappa Chettiar [1959] MLJ 149 ***(refd)***
Overseas Union Finance Ltd. v. Lim Joo Chong [1971] 2 MLJ 124 ***(refd)***
Commonwealth v. Baume [1905] 2 CLR 405 ***(cit)***
Australian Alliance Assurance Co. Ltd. v. Attorney-General (Queensland) [1916] St R Qd. 135 ***(refd)***

Legislation referred to:

Moneylenders Ordinance 1951, s. 16(3)
National Land Code 1965, ss. 42(vi), 206(3), 340(2), (4)(b)

Other sources referred to:
Land Law in Malaysia, Cases and Commentary, Teo Keang Sood and Khaw Lake Tee, 2nd Edn., p. 185.

[Appeal from High Court Ipoh; Civil Suit No: 178-1982]

For the appellants - Gurbachan Singh; M/s. Bachan & Kartar
For the respondent - D.P. Vijandran; M/s. D.P. Vijandran & Assoc.

JUDGMENT

Gopal Sri Ram JCA:

This is an appeal against the judgment of the High Court at Ipoh, dismissing with costs the appellants' claim against the respondent for several declarations the cumulative effect of which would be to impugn the title of the respondent to the subject land. The facts of this case, made complex by the machinations of the first appellant, have been sufficiently analysed and admirably dealt with by the learned Judge who tried the action. And we must say at once that he has been extremely kind in his review of the first appellant's conduct. We entertain no difficulty in affirming his findings based on the veracity of the witnesses who testified before him and with his conclusion that the appellants ought to fail in the action.

But for the learned Judge's observations upon s. 340(4)(b) of the National Land Code, 1965 ('the Code') which, we must say in all fairness to him, did not affect his decision, written reasons are not called for in this case. However, his judgment has since been reported in [1993] 3 MLJ 465. And it has been referred to in at least one work upon the subject. See, *Teo Keang Sood and Khaw Lake Tee, Land Law in Malaysia, Cases and Commentary,* 2nd Edn., p. 185. In these circumstances, and since our views do not coincide with those of the learned Judge upon the meaning of the provision in question, a written judgment from this Court has become necessary.

In the judgment appealed from, after setting out s. 340 of the Code which reads as follows:

> 340(1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.
>
> (2) The title or interest of any such person or body shall not be indefeasible
>
> (a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or

(b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or

(c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

(3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-s. (2)

(a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and

(b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested:

Provided that nothing in this sub-s. shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.

(4) Nothing in this section shall prejudice or prevent

(a) the exercise in respect of any land or interest of any power of forfeiture or sale conferred by this Act or any other written law for the time being in force, or any power of avoidance conferred by any such law; or

(b) the determination of any title or interest by operation of law.

the learned Judge said:

> In my view, it is quite impossible to regard para. (b) (the reference here is to s. 340(4)(b)) as such another exception to the indefeasibility. For one thing, the words are very vague, *viz.* "operation of law", which mean carrying into effect of the law or working of the law. The scope of the words is practically unlimited, given the ordinary meaning of the words and without their having any further word of limitation. If Counsel's contention is carried to its logical conclusion, the indefeasibility can be destroyed on any legal ground at all. It will then make nonsense of the elaborately described exceptions of fraud, forgery etc. Above all, it will practically destroy the central theme or the foundation of the Torrens system.

With respect, we do not agree with these views because they do not accord with well-established authority.

Section 340 is no newcomer to our land law. Its precursor, s. 42 of the FMS Land Code, Cap. 138 which also housed the Torrens doctrine of indefeasibility reads as follows:

42. (i) The title of a proprietor, chargee or lessee shall be indefeasible except as in this section provided.

(ii) In the case of fraud or misrepresentation to which he is proved to be a party the title of such proprietor, chargee or lessee shall not be indefeasible.

(iii) If the registration of any proprietor, chargee or lessee has been obtained by forgery or by means of an insufficient or void instrument such registration shall be void.

(iv) Nothing in sub-ss. (ii) or (iii) shall affect the title of a proprietor, chargee or lessee who has taken *bona fide* for valuable consideration from any proprietor, chargee or lessee whose registration as such was procured by any such means or by means of any such instrument as aforesaid or of any person claiming *bona fide* through or under him.

(v) When at the time the proprietor becomes registered a tenant shall be in possession of the land under an unregistered lease or agreement for a lease or for letting for a term not exceeding one year the title of the tenant under such lease or agreement shall prevail.

(vi) Nothing in this section shall be construed so as to prevent the title of any proprietor being defeated by operation of law.

In our judgment, the difference in language between the two sections - s. 42 of the Land Code and s. 340 of the Code - does not result in any difference in meaning or consequence. It follows that the cases that have interpreted s. 42 of the Land Code (Cap. 138) may safely be relied upon when construing s. 340 of the Code.

In *Yong Joo Lin & Ors v. Fung Poi Fong* [1941] MLJ 63, the FMS Court of Appeal was concerned, *inter alia*, with the interpretation of s. 42(vi) of the Land Code. Although the actual decision in that case has since been overruled by s. 341 of the Code, we consider the following observation by Terrell Ag. CJ (SS), with which Gordon Smith Ag. JA agreed, to be of particular assistance:

> The only explanation that the respondent could give of s. 42(vi) was that it referred to various circumstances by which the title of the proprietor could be defeated under the provisions of the Land Code itself. Mr. Braddell referred the Court to several sections relevant to this argument. Under s. 30(iv) if the proprietor is dead, and no legal personal representative has been appointed, the property reverts to the State. Under s. 37(i) land may be forfeited for breach of any condition, express or implied. Under s. 102(ii) the proprietor's title is extinguished on surrender. Under Part XVIII land may be sold for non-payment of rent, and under s. 217, if no sufficient bid is received, the land can be forfeited to the State, and s. 240 provides for rectification of the Register by order of Court. The answer to this argument is that all the provisions referred to appear in the same or in a similar form either in the Land Code of 1911 or the Registration

of Titles Enactment of 1911, and that the sections themselves provide for the defeasance of the registered proprietor's title in the particular circumstances referred to. It was not found necessary in the 1911 Enactments to have any provision corresponding to s. 42(vi), and the provisions above referred to would be equally effective in the 1926 Code without s. 42(vi). *It must, I think, be presumed that the legislature would not have inserted a provision which, if Mr. Braddell's argument is accepted, would be redundant and unnecessary. The inference, therefore, is that the sub-section was inserted for some other purpose, that purpose being the protection of interests which could previously have been protected by a caveat or by some memorandum on the Register.* So far as easements are concerned the title of the proprietor would not of course be defeated absolutely, but only *pro tanto*, but, in my opinion, the words would cover this eventuality without giving them any forced construction.

It was pressed upon the Court that the Land Code is comprehensive and conclusive, and that a registered title being *prima facie* indefeasible, can only be defeated where the Land Code itself so provides. I think, however, that this contention is too wide. It appears to me that the register is only conclusive as to things that can be registered. (Emphasis added.)

It is noteworthy that the very argument that commended itself to the learned Judge in the present case was advanced by Mr. Braddell of Counsel in *Yong* and rejected by the FMS Court of Appeal. We also note that Parliament has given legislative sanction to the views expressed by the Ag. Chief Justice of the Straits Settlements in *Yong Joo Lin* on the nature of our version of the Torrens system by enacting s. 206(3) of the Code which provides as follows:

(3) Nothing in sub-s. (1) shall affect the contractual operation of any transaction relating to alienated land or any interest therein.

In *Ong Chat Pang & Anor v. Valliappa Chettiar* [1971] 1 MLJ 224, a case decided under the Land Code, Gill FJ (as he then was) when applying the decision in *Yong* said (at p. 232):

The term 'operation of law' in sub-s. (vi), as Das on *Torrens System in Malaya* points out at p. 235, is a generic term deliberately used by the legislature to grant relief in cases where contractual or conscientious obligations (importing a breach of duty to which equity has attached its sanction) are undertaken by or imposed on the registered proprietor either at law or in equity.

The effect of s. 340(4)(b) of the Code has been admirably summarised by Faiza Tamby Chik J in *Dr. Benjamin George & Ors v. Majlis Perbandaran Ampang Jaya* [1996]2 CLJ 843 at p. 876; [1995] 3 MLJ 665 at p. 697 as follows:

Registration under s. 340 of the National Land Code 1965 ('the NLC') confers an indefeasible title to the developer. However, ss. 206(3) and 340(4)(b) of the NLC preserve the *in personam* rights (contractual or equitable) existing between the developer and the purchaser of an apartment by virtue of the sale and purchase agreement for an apartment entered into by the parties.

We are of opinion that the views expressed by Terrell Ag. CJ in *Yong Joo Lin* and by Gill FJ in *Ong Chat Pang* accurately reflect the meaning and effect of s. 340(4)(b) of the Code. We also accept what was said by Faiza Tamby Chik J in *Dr. Benjamin George & Ors. v. Majlis Perbandaran Ampang Jaya* as a correct statement of the law.

In our judgment, Parliament enacted s. 340(4)(b) for the purpose of dealing with fact patterns that do not fall squarely within the other exceptions to indefeasibility that appear in the second sub-section to s. 340 of the Code. While recognising that it is neither possible, nor desirable to predict with any degree of certainty the wide range of cases that, while failing to come within the vitiating categories specified by the second sub-section, may yet come within the scope of s. 340(4)(b), we cite, by way of illustration only, cases decided under the Moneylenders Act 1951.

Thus, in *Abirami Ammal & Anor. v. M.S.M.M. Meyappa Chettiar* [1959] MLJ 149, the Malayan Court of Appeal having held that a charge over land given by the borrower to secure a loan obtained from a licensed moneylender to be fatally flawed for non-compliance of s. 16 of the Moneylenders Ordinance 1951 made an order "for the return of the documents of title and entry of a memorandum of discharge on the land register." See Thomson CJ and Rigby J at p. 152 of the report.

Again, in *Overseas Union Finance Ltd. v. Lim Joo Chong* [1971] 2 MLJ 124, Raja Azlan Shah J (as he then was) found a charge over land to be unenforceable as it had contravened s. 16(3) of the Moneylenders Ordinance 1951. His Lordship, having dismissed the chargee's application for an order for sale, proceeded to direct the chargee to execute a memorandum of discharge of the charge.

Accepting, for a moment, the argument that the phrase "operation of law" is to be read as referring to the provisions of s. 340(2), it would mean that in such cases as *Abirami Ammal* and *Lim Joo Chong*, where there was no suggestion of fraud, forgery or any of the other matters to which the second sub-section refers, the chargor would be unable to rid the register of the offending charge notwithstanding that the entire transaction was in violation of written law. The resultant incongruity would in itself be a sufficient answer to the proposition advanced.

There is a second and equally compelling reason for rejecting the argument. It is this. The function of a Court when construing an Act of Parliament is to interpret the statute in order to ascertain legislative intent primarily by reference to the words appearing in the particular enactment. *Prima facie*, every word appearing in an Act must bear some meaning. For Parliament does not legislate in vain by the use of meaningless words and phrases. A judicial interpreter is therefore not entitled to disregard words used in a statute or subsidiary legislation or to treat them as superfluous or insignificant. It must be borne in mind that:

> As a general rule a Court will adopt that construction of a statute which will give some effect to all of the words which it contains. per Gibbs J in *Beckwith v. R.* [1976] 12 ALR 333, at p. 337.

See also, *Commonwealth v. Baume* [1905] 2 CLR 405, at p. 414. Per Griffith CJ.

Where it is impossible to give a full and accurate meaning to every word appearing in a section of a statute, the duty of the Court is to give the words an interpretation, "that produces the greatest harmony and the least inconsistency": *Australian Alliance Assurance Co. Ltd. v. Attorney-General (Queensland)* [1916] St R Qd. 135 at p. 161, per Cooper CJ.

Based on the authorities that have settled the law relating to the construction of statutes, we are unable to accept that Parliament intended s. 340(4)(b) to have no effect whatsoever or to lack in meaning. Quite to the contrary, we are of the view that the sub-section ought to receive the construction it has received in the cases earlier discussed.

Save and except to the extent that we dissent from the views expressed by the learned Judge upon the issue of law thus far discussed, we are in agreement with all other findings made by him. The appeal was accordingly dismissed and those orders made that are usually consequent upon a dismissal.

Reported by W.A. Sharif